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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/277,893	03/29/1999	KENNETH W. MARR	3543US(97-95	4223
7590 03/15/2006				
BRICK G POWER TRASK BRITT & ROSSA P O BOX 2550 SALT LAKE CITY, UT 84110				
			EXAMINER RICHARDS, N DREW	
			ART UNIT 2815	PAPER NUMBER

DATE MAILED: 03/15/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Advisory Action Before the Filing of an Appeal Brief	Application No. 09/277,893	Applicant(s) MARR, KENNETH W.	
	Examiner N. Drew Richards	Art Unit 2815	

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 13 February 2006 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.
b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☐ They raise the issue of new matter (see NOTE below);
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☒ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
The status of the claim(s) is (or will be) as follows:
Claim(s) allowed: _____.
Claim(s) objected to: _____.
Claim(s) rejected: 17-33, 50-72 and 74-101.
Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
See Continuation Sheet.
12. ☒ Note the attached Information Disclosure Statement(s). (PTO/SB/08 or PTO-1449) Paper No(s). 1/18/06, 2/28/06
13. ☐ Other: _____.


N. Drew Richards
AU 2815

Continuation of 11. does NOT place the application in condition for allowance because: applicant's arguments are not persuasive. Applicant presents arguments similar to those responded to in the previous Office Action. Please see the previous Office Action for the response to the repeated arguments. The newly presented arguments are briefly responded to below.

Applicant argues that without the benefit of hindsight, one of ordinary skill in the art would not have been motivated to combine Fischer and Chen in the manner asserted. This is not persuasive since the combination asserted relies solely upon knowledge which was within the level of ordinary skill at the time the claimed invention was made.

Applicant also argues that neither Chen nor Fischer provides any reason to substitute a silicide for the fuse layer of Fischer. This is not persuasive as Chen clearly states that a silicide is the most preferred material for the fuse layer. The layer being recognized as the "most preferred" provides adequate motivation for using the material.

Applicant also argues that one of ordinary skill in the art wouldn't be motivated to modify Chen. This is not persuasive as in the claim argued (claim 17) Chen has not been modified.

Applicant also argues that Fischer teaches away from the asserted motivation to substitute a silicide for the programmable portion of a fuse. This is not persuasive since teaching an alternative material is not an explicit teaching away from the combination.

Applicant also argues that Mitani does not remedy the supposed deficiencies of Fischer and Chen. This is not persuasive as Fischer and Chen do not have any deficiencies in regard to the claims they were used to reject. For the claims that Mitani is relied upon, Mitani teaches steps that are missing in Fischer and Chen. Applicant argues that Fischer, Chen and Mitani aren't motivated to be combined in the applied manner since they don't provide clear guidance as to the function of metal silicide as the fusible element of a multi-layered fuse. This is not persuasive as Chen clearly teach that metal silicide is the most preferred material for the fusible element in a fuse. Thus, one of ordinary skill in the art would expect the same metal silicide to function properly in a multilayered fuse when the multi-layered portion (as taught by Fischer) is not in the fusible area. Applicant then argues that due to the extreme divergence between the methods of Fischer, Chen and Mitani, there is no way that the teachings of all these references could be considered in developing a fuse fabrication method such as that of claim 18. This is not persuasive since this argument is not well understood. Fischer, Chen and Mitani all deal with forming fuses. This would seem to indicate that these references are fairly closely related and do not have an "extreme divergence" between them.

Applicant also argues that there is no teaching that the methods of various other references relied upon, such as Degelormo et al. and Ukeda, are applicable to the fabrication of fuses. This is not persuasive. One of ordinary skill in the art would recognize that a method of etching polysilicon through a metal silicide layer and that forming polysilicon by a CVD process are processes that can be used in a multitude of different semiconductor fabrication methods. The fact that the layers are labeled "fuses" or later used as a fuse does not change the chemistry and physics involved with the deposition and etching steps of the layers. These references show that it was well known in the semiconductor industry to use these particular techniques and one of ordinary skill in the art would be able to apply the techniques to various different devices regardless of whether they are labeled "fuses" or used as "fuses."

For these reasons, as well as for the reasons enumerated in the Final Office Action, the rejections are still considered proper.